

ASSEMBLY BILL

No. 1106

Introduced by Assembly Member Strickland

February 22, 2005

An act to amend Sections 209, 653f, and 667.61 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1106, as introduced, Strickland. Crimes

Existing law provides that any person who kidnaps or carries away any individual to commit certain offenses is punishable by life in prison with the possibility of parole.

This bill would add to the list of offenses, certain sex offenses committed against specified minors or dependent adults.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law provides that every person who, with the intent that the crime be committed, solicits another to commit specified sex offenses is punishable by imprisonment in the state prison for 2, 3, or 4 years.

This bill would expand that crime to include persons who, with the intent that the crime be committed, solicits another to join in the commission of those specified offenses.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law provides that the commission of certain sex offenses if committed under specified circumstances, are punishable by life in prison without eligibility for parole for either 15 or 25 years, as specified.

This bill would add to the list of qualifying sex offenses, the offense of continuous sexual abuse of a child under 14 years of age, as

specified, unless the defendant qualifies for probation, pursuant to other provisions of law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 209 of the Penal Code is amended to
2 read:

3 209. (a) Any person who seizes, confines, inveigles, entices,
4 decoys, abducts, conceals, kidnaps or carries away another
5 person by any means whatsoever with intent to hold or detain, or
6 who holds or detains, that person for ransom, reward or to
7 commit extortion or to exact from another person any money or
8 valuable thing, or any person who aids or abets ~~any such act of~~
9 *those acts*, is guilty of a felony, and upon conviction thereof,
10 shall be punished by imprisonment in the state prison for life
11 without possibility of parole in cases in which any person
12 subjected to ~~any such act of those acts~~ suffers death or bodily
13 harm, or is intentionally confined in a manner which exposes that
14 person to a substantial likelihood of death, or shall be punished
15 by imprisonment in the state prison for life with the possibility of
16 parole in cases where ~~no such~~ person suffers death or bodily
17 harm.

18 (b) (1) Any person who kidnaps or carries away any
19 individual to commit robbery, rape, spousal rape, oral copulation,
20 *a violation of Section 288*, sodomy, or sexual penetration in
21 violation of Section 289, shall be punished by imprisonment in
22 the state prison for life with possibility of parole.

23 (2) This subdivision shall only apply if the movement of the
24 victim is beyond that merely incidental to the commission of, and
25 increases the risk of harm to the victim over and above that
26 necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 2. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars (\$10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit, *or to join in the commission of*, rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) (1) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(2) This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 3. Section 667.61 of the Penal Code is amended to read:

667.61. (a) A person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years except as provided in subdivision (j).

(b) Except as provided in subdivision (a), a person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) A violation of paragraph (2) of subdivision (a) of Section 261.

(2) A violation of paragraph (1) of subdivision (a) of Section 262.

(3) A violation of Section 264.1.

(4) A violation of subdivision (b) of Section 288.

(5) A violation of subdivision (a) of Section 289.

(6) Sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(7) A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.

(8) A violation of Section 288.5, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission

1 of a burglary, as defined in subdivision (a) of Section 460, or
2 during the commission of a burglary of a building, including any
3 commercial establishment, which was then closed to the public,
4 in violation of Section 459.

5 (3) The defendant personally inflicted great bodily injury on
6 the victim or another person in the commission of the present
7 offense in violation of Section 12022.53, 12022.7, or 12022.8.

8 (4) The defendant personally used a dangerous or deadly
9 weapon or firearm in the commission of the present offense in
10 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

11 (5) The defendant has been convicted in the present case or
12 cases of committing an offense specified in subdivision (c)
13 against more than one victim.

14 (6) The defendant engaged in the tying or binding of the
15 victim or another person in the commission of the present
16 offense.

17 (7) The defendant administered a controlled substance to the
18 victim by force, violence, or fear in the commission of the
19 present offense in violation of Section 12022.75.

20 (f) If only the minimum number of circumstances specified in
21 subdivision (d) or (e) which are required for the punishment
22 provided in subdivision (a) or (b) to apply have been pled and
23 proved, that circumstance or those circumstances shall be used as
24 the basis for imposing the term provided in subdivision (a) or (b)
25 rather than being used to impose the punishment authorized
26 under any other law, unless another law provides for a greater
27 penalty. However, if any additional circumstance or
28 circumstances specified in subdivision (d) or (e) have been pled
29 and proved, the minimum number of circumstances shall be used
30 as the basis for imposing the term provided in subdivision (a),
31 and any other additional circumstance or circumstances shall be
32 used to impose any punishment or enhancement authorized under
33 any other law. Notwithstanding any other law, the court shall not
34 strike any of the circumstances specified in subdivision (d) or (e).

35 (g) The term specified in subdivision (a) or (b) shall be
36 imposed on the defendant once for any offense or offenses
37 committed against a single victim during a single occasion. If
38 there are multiple victims during a single occasion, the term
39 specified in subdivision (a) or (b) shall be imposed on the
40 defendant once for each separate victim. Terms for other offenses

1 committed during a single occasion shall be imposed as
2 authorized under any other law, including Section 667.6, if
3 applicable.

4 (h) Probation shall not be granted to, nor shall the execution or
5 imposition of sentence be suspended for, any person who is
6 subject to punishment under this section for any offense specified
7 in paragraphs (1) to (6), inclusive, of subdivision (c).

8 (i) For the penalties provided in this section to apply, the
9 existence of any fact required under subdivision (d) or (e) shall
10 be alleged in the accusatory pleading and either admitted by the
11 defendant in open court or found to be true by the trier of fact.

12 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
13 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
14 years in the state prison imposed pursuant to subdivision (a) or
15 15 years in the state prison imposed pursuant to subdivision (b).
16 However, in no case shall the minimum term of 25 or 15 years be
17 reduced by more than 15 percent for credits granted pursuant to
18 Section 2933, 4019, or any other law providing for conduct credit
19 reduction. In no case shall any person who is punished under this
20 section be released on parole prior to serving at least 85 percent
21 of the minimum term of 25 or 15 years in the state prison.

22 SEC. 4. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the
27 penalty for a crime or infraction, within the meaning of Section
28 17556 of the Government Code, or changes the definition of a
29 crime within the meaning of Section 6 of Article XIII B of the
30 California Constitution.